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No. 87-505

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

CHICK KAM CHOO, *et al.*,
Petitioners,

v.

EXXON CORPORATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR PETITIONERS

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QUESTIONS PRESENTED

1. Whether the Anti-Injunction Act, 18 U.S.C. § 2283, precludes a federal district court from enjoining a state court admiralty proceeding on the grounds that the federal court has previously dismissed the case on grounds of federal *forum non conveniens.*

2. Whether, assuming that a federal court has the power to enjoin the maintenance of a state court action when the case has previously been dismissed in the federal courts on *forum non conveniens* grounds, principles of equity, comity and federalism require that the case be allowed to proceed in the state court so that it can determine the scope of its own *forum non conveniens* doctrine and accommodate any possible federal interests at issue.

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 817 F.2d 307 and is reprinted in the Appendix to the petition for certiorari (hereafter "Pet. App.") at Pet. App. II at 1-86. The order of the United States District Court for the Southern District of Texas is not published. That order is set forth at Pet. App. I at 1-4. Reported decisions of the court of appeals relating to prior aspects of this litigation are as follows: *Chick Kam Choo v. Exxon Corp.*, 699 F.2d 693 (5th Cir.), *cert. denied*, 464 U.S. 826 (1983); *Chick Kam Choo v. Exxon Corp.*, 764 F.2d 1148 (5th Cir. 1985).

JURISDICTION

The judgment of the court of appeals was entered on May 21, 1987. A Petition for Rehearing and a Suggestion for Rehearing En Banc were denied on June 24, 1987. The petition for a writ of certiorari was granted by the Court on November 16, 1987. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The statute involved in this case is the Anti-Injunction Act, 28 U.S.C. § 2283, which provides as follows:

> A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

Petitioner Chick Kam Choo is a resident of the Republic of Singapore and the widow of Leong Chong,[1] a shipwright killed in 1977 as a result of an accident that occurred while he was assisting in the repair of the Esso Wilhelmshaven, a blue-water vessel docked in Singapore. The ship was owned by Respondent Esso Tankers, Inc. ("ETI"), a 100% indirectly-owned affiliate of Respondent Exxon Corporation. It was being operated by Exxon International Company ("EIC"), an unincorporated division of Exxon Corporation, pursuant to a maritime service agreement between ETI and EIC. ETI has its headquarters and base of operations in New Jersey. Respondent Exxon, a New Jersey corporation, maintains headquarters and conducts business activities in Houston, Texas. *See* Joint Appendix ("JA") at 15-16; JA 27-28.[2] Plaintiff contended that the Liberian flag of the Esso Wilhelmshaven was a flag of convenience and that the vessel's true, beneficial flag was that of the United States.

[1] In addition to Petitioner Choo, the Petitioners in this Court include Benton Musselwhite, Esquire and Joseph C. Blanks, Esquire, both of whom are counsel for Petitioner Choo and both of whom were personally enjoined in the order at issue.

In 1978, Mrs. Choo brought suit in the United States District Court for the Southern District of Texas in Houston, presenting claims under the Jones Act, 46 U.S.C. § 688; the Death On The High Seas Act, 46 U.S.C. § 761 *et seq.* ("DOHSA"); general maritime law of the United States; and the Texas Wrongful Death Statute. In this initial federal court action, Mrs. Choo neither cited nor relied on the Texas "open forum" statute, which was then embodied in Article 4678 of the Revised Civil Statutes of Texas. Tex. Rev. Civ. Stat. Ann., art. 4678 (Vernon Supp. 1984).

Respondents moved for partial summary judgment on the Jones Act, DOHSA and general maritime claims, maintaining that Chong was not a seaman, that the DOHSA was not applicable because the accident occurred within the territorial waters of a foreign nation, and that the general maritime law did not apply because of insufficient contacts with the United States. Respondents also sought dismissal of Mrs. Choo's claims on grounds of *forum non conveniens*. *See* JA at 8-12.[3] In that re-

[2] The recommendations of the United States magistrate, which the district court adopted as the basis for its *forum non conveniens* dismissal, found that Exxon had its "headquarters" and "principal place of business" in Houston, Texas. *See* JA at 32. Exxon subsequently maintained in the removal proceeding that its principal place of business was in New York rather than Houston, however. *See* JA at 47. As in personam jurisdiction was admitted by Exxon, this difference is of no consequence to the issues presented here.

[3] As the magistrate indicated, Petitioner Choo's case was consolidated with the separate actions of two other parties whose decedents were killed in an accident on the same vessel, which had occurred eleven days prior to the accident that resulted in the death of Mr. Chong. *See* JA at 27-28. Those cases are not at issue here.

gard, Respondents asserted only that the federal court should not hear the remaining claims. They never argued, and the district court never decided, whether federal maritime law preempted other courts, including those of Texas, from deciding *forum non conveniens* questions in accordance with their own standards. Likewise not presented or decided by the district court was the question whether the case could be dismissed under Texas *forum non conveniens* principles. *See* JA at 14-26; *see also* note 11, *infra*.

The district court, adopting the recommendations of the magistrate, held that Chong was not a Jones Act seaman and that the DOHSA was inapplicable because the accident occurred within the territorial waters of Singapore. The court also granted Respondents' motion for dismissal of Petitioner Choo's general maritime claims. JA at 34-36. The court also ordered a dismissal, without prejudice, on grounds of *forum non conveniens*, with the proviso that Respondents consent to the jurisdiction of the appropriate Singapore court, submit to service of process there, waive any possible statute of limitations defenses, and consent to satisfy any judgment rendered by that court. JA at 34-35. These rulings were affirmed on appeal. *Chick Kam Choo v. Exxon Corp.*, 699 F.2d 693 (5th Cir.), *cert. denied*, 464 U.S. 826 (1983) (*"Choo I"*).

Thereafter, Mrs. Choo filed suit in the Texas state courts in Houston.[4] *See* JA at 37-44. Respondents im-

[4] Although the Fifth Circuit characterized the complaints in the state and federal cases as "identical," *see* Pet. App. II at 3, n.2, comparison of Mrs. Choo's complaints in *Choo I* and the state case indicates that the court was mistaken in that regard. *Compare* JA at 3-5 *with* JA at 37-43. The charging paragraph of the federal complaint recites causes of action under the Jones Act and general maritime law, and, in the alternative, claims a right of recovery under DOHSA and the Texas Wrongful Death Statute. *See* JA at 4, ¶ 4. While the state case initially included all of those claims, Mrs. Choo also pleaded an alternative right to recovery under the substantive laws of Singapore, which she alleged were similar to the laws of Texas with respect to liability and damages issues. *See*

mediately removed to the federal district court on alleged diversity grounds, and the case was assigned to a different district judge.[5] After denying Mrs. Choo's motion to remand to the state courts, the district court dismissed the action on grounds of *res judicata* and sanctioned her counsel. JA at 86-87. The Fifth Circuit reversed, holding that complete diversity among the parties did not exist, and thus the removal was not authorized. The sanctions were dissolved, and the case was returned to the state court for further proceedings. *Chick Kam Choo v. Exxon Corp.*, 764 F.2d 1148 (5th Cir. 1985) (*"Choo II"*).

Soon after the Fifth Circuit's mandate issued in *Choo II*, Respondents instituted an independent injunction action against Petitioner Choo and her counsel in the federal district court, seeking to enjoin the state action as an interference with the prior federal judgment. JA at 90-94. This new action was assigned to the same district court judge that had dismissed the removed case. Petitioners opposed, asserting lack of jurisdiction, the Anti-Injunction Act, 28 U.S.C. § 2283, and principles of equity. JA at 96-98.

Respondents' request for injunctive relief was predicated only on the alleged *res judicata* effect of the initial

JA at 40, ¶ IV. Furthermore, reciting jurisdiction under 46 U.S.C. § 764, plaintiff alleged that she intended to demonstrate that she had causes of action under the laws of all foreign countries that were connected to the incident in question. *See* JA at 40, ¶ VI.

As the court of appeals correctly noted, Mrs. Choo accepted a dismissal of her Jones Act, DOHSA and general maritime claims that were initially brought in the state action. Pet. App. II at 3, n.2. The result did not limit the case to state-law claims, however, since the foreign claims had been explicitly pleaded.

[5] The initial suit was considered by the Honorable Gabrielle K. McDonald. The removed case, as well as the injunction action giving rise to this petition, were both assigned to the Honorable Norman W. Black.

federal action on the state case. Respondents did not contend, nor did the second district court decide, that the district court in *Choo I* had determined that there was an identity of objective facts and criteria governing the application of federal *forum non conveniens* law and the law of Texas. Nor did Respondents urge that the first district court had decided that a *forum non conveniens* dismissal would have been appropriate under Texas law, or that Texas law was preempted with respect to the *forum non conveniens* issue. *See* JA at 90-94. These considerations likewise were not addressed by the second district court. JA at 118-119. That court nonetheless granted the requested injunction and again sanctioned counsel. *Id.* With only the most passing reference to the Anti-Injunction Act, a panel of the Fifth Circuit affirmed.[6]

After determining that the district court retained pendent jurisdiction to enter a *forum non conveniens* dismissal of the nonfederal claims, Judge Gee's opinion turned to an examination of general principles of *res judicata*, estoppel, and *forum non conveniens*. Acknowledging that federal courts permit relitigation of *forum non conveniens* determinations in cases where the plaintiff demonstrates different contacts between the new forum and the underlying dispute, Pet. App. II at 14-15 (citing *Mizokami Bros. of Arizona v. Mobay Chemical Corp.*, 660 F.2d 712 (8th Cir. 1981)), and that Professor Wright had commented that *forum non conveniens*

[6] Each of the three judges on the panel wrote separately to express his own views concerning the proper resolution of the appeal. As the opening footnote in the majority opinion makes clear, Chief Judge Clark would have perferred to resolve the case without deciding the *res judicata* effect to be accorded the federal court's *forum non conveniens* dismissal, and he joined Judge Gee's opinion only because his view of that issue could not command a majority. *See* 817 F.2d at 309, n.*; *see also* Pet. App. II at 80-84 (Clark, C.J., concurring). Judge Reavley dissented, stating that the matter should be left for resolution by the state courts. *Id.* at 84-86 (Reavley, J., dissenting).

rulings generally do not result in issue preclusion because of intrinsic differences in convenience issues, Pet. App. II at 18 (citing 18 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4436, at 346 (1981)), Judge Gee professed to distinguish those principles. He concluded that, under the present circumstances, direct estoppel should apply, Pet. App. II at 19-22, and that Mrs. Choo had failed to present objective facts that would materially alter the previous *forum non conveniens* ruling. *Id.* at 15-16, 21-22, 24-26.

Although stating that this determination normally would have disposed of the case, Judge Gee then turned to an asserted "peculiarity" of Texas law that, in his view, made it necessary "to consider larger matters indeed." *Id.* at 26. Examining the Texas "open forum" statute that Mrs. Choo sought to invoke in the Texas courts, Judge Gee expressed concern that the Texas courts might agree with Petitioners that this statute reflected the legislature's intent to render Texas the "world's forum of final resort, where suit for personal injury or death may always be filed if nowhere else." *Id.* at 28-29.[7] While recognizing the issue to be an "open"

[7] As this Court observed in *Pennzoil Co. v. Texaco, Inc.*, 107 S. Ct. 1519, 1526 (1987), Article I, Section 13 of the Texas Constitution contains an "open courts" provision that requires that "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." The Texas statute considered by the Fifth Circuit, Section 71.031 of Tex. Civ. Prac. & Rem. Code (Vernon 1986), reflects that mandate and provides as follows:

> (a) An Action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:
>
> (1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

question" under Texas law, *id.* at 29-33, the court concluded that there was a "substantial likelihood that [the Texas Supreme Court] will decline to acknowledge the doctrine of *forum non conveniens* even in a maritime case governed by federal law." *Id.* at 34. Judge Gee then held that federal *forum non conveniens* determinations should preempt state law in such cases. On this basis, he sustained the district court's injunction, thereby depriving the Texas courts of the opportunity to address the "open question" concerning interpretation of the Texas statute at issue.

Chief Judge Clark's separate concurring opinion joined the result reached by Judge Gee, but expressed a different rationale. Chief Judge Clark concluded that the federal district court's determination that the contested issues should not be litigated in Houston was final and binding as between the parties, and he stated that the challenged injunction "did no more than order *parties* that had been subject to its jurisdiction to give effect to its adjudication of an issue raised by and finally decided as between them." *Id.* at 81-82 (Clark, C.J., concurring) (emphasis in original). Recognizing that injunctions addressed to parties can have an impact on courts as well, and that some such injunctions are prohibited by the Anti-Injunction Act, Chief Judge Clark maintained that this injunction was authorized by the exception to the Act allowing injunctions to effectuate prior federal judgments. He further asserted that the injunction "does not

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(2) the action is begun in this state within the time provided by the laws of this state for beginning the action; and

(3) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) All matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

implicate Texas courts or Texas law." *Id.* at 82. According to Chief Judge Clark, Petitioners' actions were contrary to the federal court's final order. He thus concluded that "[t]he fact that Texas courts might not use the same principles of adjudication furnishes only the condition that permits the violation to occur," since Texas law "may permit, but it surely does not require, that Choo use its courts." *Id.* at 83.

Judge Reavley dissented, maintaining that "[i]t is for the Texas court to decide its own forum convenience and to identify the issues subsidiary to that determination." *Id.* at 84 (Reavley, J., dissenting). As he continued,

> The majority are prepared to announce a bold new rule of preemption and to nullify the Texas open forum law for admiralty cases. If that be good law, this is not the time or place to declare it. I would prefer that the Texas courts decide Texas law, and that another court, preferably the Supreme Court, after full consideration, decide whether to sweep so far.

Id. at 85.

After a conflicting decision was rendered by the United States Court of Appeals for the Ninth Circuit, *see Zipfel v. Halliburton Co.*, 832 F.2d 1477 (9th Cir. 1987), *pet'n for cert. filed sub nom. Crowley Maritime Corp v. Zipfel*, No. 87-1122 (January 4, 1988), this Court granted certiorari.

SUMMARY OF ARGUMENT

1. The court of appeals erred in holding that the federal court had jurisdiction to entertain Respondents' request for injunctive relief in the wake of its previous *forum non conveniens* determination. The Anti-Injunction Act precludes lower federal courts from enjoining the proceedings of state courts except in three limited circumstances. The only exception even potentially applicable here is the so-called relitigation exception. That

provision does not apply for two separate reasons, however.

First, the issues that prompted the injunction had not been resolved in the initial federal district court action. That court did not decide whether Texas *forum non conveniens* law was preempted in maritime cases. Nor did it determine whether Texas law would require a *forum non conveniens* dismissal in this case. Rather, it applied federal *forum non conveniens* principles to rule that this case did not belong in the federal court in Houston. In these circumstances, the relitigation exception to the Anti-Injunction Act is inapplicable. *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1970).

Second, even assuming that the *forum non conveniens* issue was resolved in the initial federal court action, the Anti-Injunction Act would still prohibit the injunction issued in this case. The relitigation exception applies only to cases that have been resolved on their merits. A discretionary dismissal for *forum non conveniens* is simply not the kind of ruling that a federal court may later protect by enjoining a state court. *See Zipfel v. Halliburton Co., supra.* Having decided that it will not hear the matter, the federal court has no remaining interest in prohibiting the court of a sovereign state from deciding that issue for itself.

The court of appeals' contrary analysis does not withstand scrutiny. Its holding that federal *forum non conveniens* law preempts state law in maritime cases does not support the injunction below. It is well-established that federal preemption does not create an exception under the Anti-Injunction Act. *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511 (1955). The state courts have long been recognized as fully capable of deciding federal preemption issues. The decisions of those courts on such issues, moreover, always remain subject to review by this Court.

2. Even if jurisdiction existed to entertain a request to enjoin this state court proceeding, principles of equity, comity, and federalism precluded the issuance of an injunction in this instance. As a general rule, the state courts are equally competent to determine what effect, if any, to give a federal court's previous *forum non conveniens* determination, and comity and federalism require that they be allowed to do so in all but the most unusual of circumstances. *Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1 (1950). In this case, the mandate for allowing the state court to consider the issue is especially compelling. As the court of appeals acknowledged, the Texas Supreme Court has not finally determined the reach of the Texas "open forum" statute, or the extent to which *forum non conveniens* considerations apply thereunder. Certainly, the Texas courts are best able to interpret the scope of a Texas statute. They are also as adept as the lower federal courts in identifying and accommodating any unique considerations of maritime law that might warrant special recognition.

The court of appeals took these issues away from the Texas courts on the ground that they were preempted under federal law. While we think that those preemption issues are better left to the Texas courts in the first instance, we note that the Fifth Circuit's analysis of the matter is flawed in any event. Congress has long preserved state court jurisdiction to hear admiralty claims. 28 U.S.C. § 1332; *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207 (1986). In so doing, it has recognized that state courts are entitled to apply their own procedural rules to federal substantive law. The doctrine of *forum non conveniens* is procedural for these purposes. It does not affect substantive behavior, and it goes to the heart of a court's operations and administrative concerns. *Piper Aircraft Corp. v. Reyno*, 454 U.S. 235 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). The foreign policy concerns referred to by the Fifth Circuit are bet-

ter left for Congress to assess. Likewise, the court's concerns about Texas opening the floodgates to foreign litigants are overstated. That is, in any case, a matter for Texas to decide.

ARGUMENT

I. THE ANTI-INJUNCTION ACT ESTABLISHES A JURISDICTIONAL BAR TO FEDERAL INJUNCTIONS OF STATE COURT PROCEEDINGS IN ALL BUT THREE NARROWLY-DEFINED CIRCUMSTANCES, NONE OF WHICH ARE APPLICABLE HERE.

The Anti-Injunction Act recognizes the important allocation of powers between the lower federal courts and the state court systems that has prevailed since the founding of the Republic. Reflecting "the essentially federal nature of our national government," *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, *supra* 398 U.S. at 285, the Act precludes federal injunctions of state court proceedings in all but three narrowly defined circumstances.

The Act and its predecessors uniformly have reflected Congress's judgment that the lower federal courts are to accord a full measure of respect for the autonomy and independence of the state courts.[8] As this Court stated

[8] The present Anti-Injunction Act, 28 U.S.C. § 2283, is the third such statute enacted by Congress. The original was enacted in 1793 as one of a number of amendments to the statutes establishing the judicial courts of the United States and stated, "nor shall a writ of injunction be granted to stay proceedings in any court of a state." Act of March 2, 1793, c. 22, § 5, 1 Stat. 335. This provision was supplemented in the Judicial Code of 1911 to add a bankruptcy exception. The 1911 revision provided as follows: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." Act of March 3, 1911, c. 231, § 265, 36 Stat. 1162. The present version of the Anti-Injunction Act, enacted in 1948, was passed by Congress in response to this Court's decision in *Toucey v. New York Life Ins. Co.*, 314 U.S. 118 (1941).

in explaining the purpose of the original limitation against federal injunctions of state court proceedings, "[t]he provision expresses on its face the duty of 'hands off' by the federal courts in the use of the injunction to stay litigation in a state court." *Toucey v. New York Life Ins. Co.*, 314 U.S. 118, 132 (1941). Likewise, the present Act, embodying the "fundamental principle of a dual system of courts," *Atlantic Coast Line*, *supra*, 398 U.S. at 286, serves to forestall "the inevitable friction between the state and federal courts that ensues from injunctions of state judicial proceedings by a federal court." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630-31 (1977) (plurality opinion); *see also Amalgamated Clothing Workers of America v. Richman Bros.*, *supra*, 348 U.S. at 519; *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 8-9 (1940).

Consistent with this basic purpose, the Act allows only three limited exceptions in which federal courts may enjoin state proceedings: when expressly authorized by an Act of Congress, necessary in aid of federal jurisdiction, or necessary to protect or effecutate federal court judgments. Even these limited exceptions are to be read strictly and narrowly. As the Court has made clear, exceptions to the Anti-Injunction Act are "not to be enlarged by loose statutory construction," *Atlantic Coast Line*, *supra*, 398 U.S. at 287; nor are the prohibitions of the Act "to be whittled away by judicial improvisation." *Amalgamated Clothing Workers*, *supra*, 348 U.S. at 514.

The only superficially plausible statutory exception that might justify the injunction issued below is the so-called relitigation exception, which authorizes injunctions when necessary to "protect or effectuate" federal court

judgments.[9] That provision, however, is inapposite here. The district court in the initial case never was asked to

[9] The other exceptions plainly do not apply. No serious contention could be made that the injunction in question is expressly authorized by an Act of Congress, as the first exception to the Anti-Injunction Act requires. The *forum non conveniens* determination that the Fifth Circuit sought to protect is a common law doctrine rather than a statutory one, and there is no Act of Congress that expressly authorizes the issuance of the injunction in question. *See generally Vendo Co., supra.*

Nor can the injunction be justified as necessary in aid of the court's jurisdiction. As the plurality made clear in *Vendo*, this exception applies only "where the federal court has obtained jurisdiction over the res, prior to the state court action." 433 U.S. at 641. *See also* 17 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4225, at 333-39 (1978). The Court has "never viewed parallel in personam actions as interfering with the jurisdiction of either court . . . ." *Vendo Co., supra*, 433 U.S. at 642. *See also Atlantic Coast Line, supra*, 398 U.S. at 295-96; *In re Abraham*, 421 F.2d 226 (5th Cir. 1970); *Alton Box Bd. Co. v. Esprit de Corp.*, 682 F.2d 1267, 1272 (9th Cir. 1982); *In re Federal Shopping Way, Inc.*, 717 F.2d 1264 (9th Cir. 1983); *Roth v. Bank of Commonwealth*, 583 F.2d 527 (6th Cir. 1978), *cert. granted*, 440 U.S. 944, *cert. dismissed*, 442 U.S. 925 (1979); *Coastal Petroleum Co. v. U.S. Agri-Chemicals*, 695 F.2d 1314 (11th Cir. 1983); *In re Federal Skywalk Cases*, 680 F.2d 1175 (8th Cir.), *cert. denied*, 459 U.S. 988 (1982); 17 C. Wright, A. Miller & E. Cooper, *supra*, § 4225, at 336 (explaining that it is "immaterial that the state action involves a question of federal law").

Finally, as the Ninth Circuit's analysis of the issue in *Zipfel* recognizes, district court's *forum non conveniens* dismissal of an action eliminated any jurisdiction to be protected:

> This exception does not apply . . . to the foreign seaman's lawsuits because the district court no longer has jurisdiction over those suits. The district court held that jurisdiction was more properly in a foreign forum and dismissed the foreign seaman's cases. At that point there was no need for an injunction to protect the district court's jurisdiction.

Zipfel v. Halliburton Co., 832 F.2d 1477, 1488 (9th Cir. 1987) (citations omitted), *petn. for cert. filed sub nom. Crowley Maritime Corp. v. Zipfel*, No. 87-1122 (January 4, 1988). *See also, Amalgamated Clothing Workers, supra*, 348 U.S. at 519; *Federal Deposit Ins. Corp. v. Santiago Plaza*, 598 F.2d 634, 636 (1st Cir. 1979); *Southern California Petroleum Corp. v. Harper*, 273 F.2d 715, 720 (5th Cir. 1960); *H.J. Heinz Co. v. Owens*, 189 F.2d 505, 508 (9th Cir. 1951), *cert. denied*, 342 U.S. 905 (1952).

decide and never decided either that the Texas courts would decline to entertain Mrs. Choo's action or that federal preemption would prohibit them from doing so. Moreover, even had the district court initially decided that the Texas courts would be prohibited from entertaining this case on *forum non conveniens* grounds, that kind of determination is simply not the kind of federal court ruling on the merits that may be protected by an injunction.

Apparently cognizant of these basic principles, the Fifth Circuit attempted to support the injunction below by asserting that federal *forum non conveniens* law preempts state law in admiralty cases. But even if its preemption argument were correct, the Fifth Circuit's conclusion would not follow. On the contrary, the proper forum in which to have that issue resolved is the Texas courts, subject to ultimate review by this Court.[10]

A. The District Court In the Initial Action Never Even Considered, Let Alone Decided, Whether The Texas Courts Would Have Or Could Have Entertained This Case.

The relitigation exception to the Anti-Injunction Act reflects Congress's determination that when a federal

[10] Chief Judge Clark's concurrence seems to turn in substantial measure on his view that an injunction against parties is different from an injunction against a state court. *See* Pet. App. II at 80-84 (Clark, C. J., concurring). Clearly that is in error. Even though the injunction was issued against Petitioner Choo and her counsel, this Court has repeatedly recognized that an injunction prohibiting litigants from pursuing claims in the state courts is considered to be an injunction against a state court proceeding for purposes of the Anti-Injunction Act. *See Atlantic Coast Line, supra*, 398 U.S. at 287. *See also Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, 309 U.S. 4 (1940); *Hill v. Martin*, 296 U.S. 393 (1935); 17 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4225, at 717 (1978).

court has disposed of a case or controversy on the merits it may thereafter protect its judgment by precluding relitigation of the same matter in state court. *See, e.g., Atlantic Coast Line, supra.* On the facts presented here, the necessary prerequisites to the invocation of this exception do not exist. In the initial district court action, the court granted summary judgment on Mrs. Choo's claims under the Jones Act, DOHSA and general maritime law, concluding that these legal theories were inapplicable on the facts alleged. The Texas "open forum" statute was not asserted in the complaint, however, *see* JA at 3-7, nor was it raised by Mrs. Choo in opposition to Respondents' motion to dismiss on grounds of *forum non conveniens.* Respondents' arguments in support of *forum non conveniens* likewise addressed the federal case law, not the laws of the State of Texas.[11] Thus, the court's dismissal on *forum non conveniens* grounds, holds only that, under *federal* law, this case belongs in Singapore rather than the federal district court in Houston.

The court of appeals in this case nevertheless concluded that an injunction was necessary to prevent the Texas courts from deciding whether to entertain Mrs. Choo's action. In other words, the Fifth Circuit precluded the Texas courts from considering state law *forum non conveniens* issues, as well as possible federal preemption issues, even though none of these matters were raised or decided in the district court. This decision cannot be squared with the principles governing the relitigation exception to the Anti-Injunction Act.

This Court's ruling in *Atlantic Coast Line* establishes that federal injunctions cannot issue against state court

[11] Examination of Respondents' motion for partial summary judgment and dismissal on grounds of *forum non conveniens* confirms that Respondents made no reference to the Texas "open forum" statute. *See* JA at 8-12. Similarly, with the exception of a single citation to a New York state case, Respondents' discussion of the *forum non conveniens* issue in their brief in support of the motion cited only federal authorities. *See* JA at 14-26.

proceedings to protect judgments that might have been rendered in the federal case but were not. In that case, the district court had issued an injunction preventing the petitioner, a railroad company, from enforcing a state court injunction against the respondent union's picketing activities, which the district court apparently considered to be protected activities in accordance with this Court's decision in *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969). Concluding that the district court's judgment, which was assertedly protected by the federal injunction, had not decided whether the railroad would have been precluded from obtaining an injunction under state, rather than federal, law, this Court reversed.

The railroad company in *Atlantic Coast Line* had initially sought injunctive relief in the federal district court in 1967, which was denied when the district court decided that federal law did not prohibit picketing because the union had a right to engage in that activity under the Norris-LaGuardia Act, 29 U.S.C. §§ 101 *et seq.* *See Atlantic Coast Line, supra*, 398 U.S. at 288-90. Immediately thereafter, the company sought and obtained an injunction against the picketing in the Florida courts. Two years later, the Court in *Jacksonville Terminal* reversed a state court injunction prohibiting picketing by unions at a location immediately next to the location at issue in *Atlantic Coast Line*, holding that the picketing activities were protected under the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.* Following the *Jacksonville Terminal* decision, the railroad company in *Atlantic Coast Line* sought to obtain dissolution of the state court injunction in the Florida court. It failed in that effort, however, as the Florida court determined that the *Jacksonville Terminal* decision was not controlling.[12] Thereafter, the company

[12] It should be noted that this Court assumed for the purpose of its decision in *Atlantic Coast Line* that the Florida court had erred in its determination that the *Jacksonville Terminal* case was not controlling. *See Atlantic Coast Line, supra*, 398 U.S. at 291, n.5.

sought and obtained an injunction from the federal district court, prohibiting enforcement of the earlier state court injunction.

This Court reversed, holding that the federal injunction could not be justified as necessary to protect or effectuate the district court's 1967 order. Central to the Court's decision was its careful analysis of what was and was not decided in the initial district court judgment that assertedly was protected by the later injunction. Examining the pleadings, the parties' arguments to the district court, and the court's order, this Court determined that the sole issue presented and decided in the initial federal court proceeding was whether the picketing activity was protected by the Norris-LaGuardia Act. *Atlantic Coast Line, supra*, 398 U.S. at 288-89. As the Court explained,

> Based solely on the state of the record when the order was entered, we are inclined to believe that the District Court did not determine whether federal law precluded an injunction based on state law. . . . [W]e feel that the District Court in 1967 determined that federal law could not be invoked to enjoin the picketing at Moncrief Yard, and that the union did have a right "to engage in self help" as far as the federal courts were concerned. But that decision is entirely different from a decision that the Railway Labor Act precludes state regulation of the picketing as well, and this latter decision is an essential prerequisite for upholding the 1969 injunction as necessary "to protect or effectuate" the 1967 order.

Id. at 290.

The decision in *Atlantic Coast Line* demonstrates that the initial federal court judgment must have clearly resolved the precise point assertedly protected by the subsequent injunction before the relitigation exception can be held to apply. The majority noted, for example, that the record on that issue was "not unambiguously

clear." *Id.* at 288. Indeed, the record contained evidence that was pointed to by the union suggesting that the district court's initial judgment had encompassed a determination that the picketing activities were protected against state as well as federal injunction. *See id.* at 289-90. Justices Brennan and White, in dissent, were persuaded that the district court's initial ruling necessarily implied a determination that the union's right to picket could not be subverted by resort to state court proceedings. *Id.* at 297, 299 (Brennan, J., dissenting).[13] These considerations were not deemed sufficient by a majority of the Court, however. *Atlantic Coast Line, supra*, 398 U.S. at 293.

In the instant case, it is simply not possible to suggest that the initial federal decision resolved the issues that were subject to the later injunction. To begin with, Texas law on *forum non conveniens* was never decided by the federal court. Thus, that issue should have been left for consideration in the state court action. Nor does such a conclusion exalt form over substance. It is important to emphasize in this regard that a federal and state court in the same city obviously can reach very different *forum non conveniens* rulings. As this Court

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[13] Justices Brennan and White did not disagree with the majority's recitation of the history and policies underlying Section 2283 or with its determination that *Amalgamated Clothing Workers, supra*, establishes that federal courts do not have the authority to enjoin state court proceedings "merely because it is asserted that the state court is improperly asserting jurisdiction in an area preempted by federal law or federal procedures." *Atlantic Coast Line, supra*, 398 U.S. at 297-98 (Brennan, J., dissenting). Indeed, as previously noted, the majority opinion assumed for the purpose of deciding the case that the Florida court had erred in determining that a state injunction could issue, notwithstanding the Court's *Jacksonville Terminal* decision. *See id.* at 291, n.5. Thus, it is fair to say that the majority in *Atlantic Coast Line* assumed that the state court had in fact improperly asserted jurisdiction in an area preempted by federal law and nonetheless disallowed a federal injunction. *See also* Part IC, *infra*.

has explained, *forum non conveniens* determinations generally involve consideration of factors relating to "private interest" concerns and "public interest" concerns. *See generally, Piper Aircraft Corp. v. Reyno*, 454 U.S. 235, 241 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947); *Koster v. Lumbermen's Mut. Casualty Co.*, 330 U.S. 518 (1947). The "private interest" concerns typically involve considerations relating to the interests of the individual litigants, such as the relative access to sources of proof, the availability of process for compulsion of witnesses, and other factors that contribute to the ease and expense of a particular trial. The "public interest" concerns, by contrast, relate to more generalized institutional interests of the forum itself, such as administrative difficulties flowing from docket congestion, the interests of a forum in resolving controversies of the kind presented, and the possible unfairness of burdening the citizens of that forum with jury duty to decide the case. *See generally Piper Aircraft, supra*, 454 U.S. at 241, n.6. Obviously, courts can differ in their assessment of these factors.

The Fifth Circuit's conclusion that the *forum non conveniens* determination of a federal court in a maritime case necessarily precluded the maintenance of an action in the Texas courts,[14] in short, reflects a failure to recognize the distinction between the "public" and "private interest" factors that inhere in federal *forum non conveniens* rulings and the possibility that the Texas courts may choose to balance those factors differently than would a federal court. This Court has held that state courts generally are free to decide *forum non conveniens* issues in accordance with their own standards, which may differ from those applied in the federal courts. *See Missouri v. Mayfield, supra.* In other words, absent a determination that the Texas courts would apply the same standards as did the federal court, the federal *forum non conveniens* determination cannct possibly preclude a different result in the state courts. *See also Parsons v. Chesapeake & O. Ry. Co.*, 375 U.S. 71 (1963), discussed at note 22, *infra.*[15]

In the instant case, the court of appeals never decided that the same standards would be applied in interpreting the Texas "open forum" statute as applied in federal courts. On the contrary, Judge Gee frankly acknowledged that he approved of the injunction in part because it would deprive the Texas courts of the opportunity to apply different criteria, Pet. App. II at 25-80, and Chief Judge Clark recognized the distinct possibility that the Texas courts would apply different criteria in assessing the *forum non conveniens* issue. *Id.* at 82-83 (Clark, C.J., concurring). Accordingly, Judge Gee's assertion that Mrs. Choo was required to demonstrate "objective facts" distinguishing the federal court's *forum non conveniens* ruling, *id.*, at 25, was misguided. As he himself recognized, even the same facts might lead to a different determination when weighed under the very different legal standards that the Texas courts would apply under the Texas "open forum" statute.[16]

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[14] The obvious focus of the injunction was to prevent Petitioner Choo's litigation in the Texas courts, and that likewise was the focus of the appeal. It should be noted, however, that the injunction actually prevents Petitioners from proceeding in *any* state court in the United States. *See* Pet. App. I at 1-4.

[15] In fact, a number of state courts are more liberal in offering their forum to litigants than are some federal courts. *See, e.g., In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147, 1155 (5th Cir. 1987) (en banc) (describing Louisiana law); *Sibeja v. Dow Chemical Co.*, 757 F.2d 1215, 1219 (11th Cir.), *cert. denied*, 474 U.S. 948 (1985) (Florida law).

[16] For the same reason, Judge Gee's analysis and distinction of some of the federal authorities misses the point. It should be noted, moreover, that federal *forum non conveniens* dismissals are often not deemed preclusive even in other *federal* courts. Federal courts have permitted relitigation of *forum non conveniens* issues from one federal court to the next in cases where the plaintiff demon-

Apparently aware of these flaws of analysis, the Fifth Circuit attempted to bootstrap its ruling by further holding that federal law preempts state law on the *forum non conveniens* issue in an admiralty case. The argument is unavailing. Even assuming, contrary to what we show below, *see* Part II B, *infra*, that the Fifth Circuit's preemption ruling was correct, the issue was nevertheless not considered or decided in the original federal action. Therefore, it is not within the relitigation exception. *See Atlantic Coast Line*, *supra*. Nor, as we also discuss below, is federal preemption an independent ground for enjoining a state court proceeding. *See* Part I C, *infra*.

In sum, the relitigation exception to the Anti-Injunction Act does not apply here for the simple reason that the grounds on which the injunction was premised were neither raised nor resolved in the initial federal action.

B. The Relitigation Exception Does Not Apply In Any Event Since It Only Authorizes Injunctions To Protect Final Judgments That Have Established The Substantive Rights Of The Parties Regarding The Merits Of The Case Or Controversy At Issue.

Even assuming that the federal court's *forum non conveniens* ruling could properly be said to have decided that this case could be litigated only in Sinapore, that ruling would still not fall within the relitigation exception. As we demonstrate below, not every issue decided during the course of a federal litigation can be sheltered from possible reconsideration by enjoining state court

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strates different contacts between the new forum and the underlying dispute, as Judge Gee acknowledged. Pet. App. II at 14, *citing Mizokami Bros.*, *supra*. In fact, the Ninth Circuit has recognized that one federal district court judge can even reconsider a *forum non conveniens* determination of another judge of the same federal judicial district in appropriate cases. *See Zipfel*, *supra*, 832 F.2d at 1481, *citing Costner v. First Nat'l Bank*, 278 F.2d 376, 380 (9th Cir. 1960). *But see Pasteurka v. Texaco, Inc.*, 565 F.2d 851 (3d Cir. 1977).

litigation. Rather, the Anti-Injunction Act allows such injunctions only where they are required to protect or effectuate definitive judgments on the merits, which establish the substantive rights of the parties. *Forum non conveniens* determinations are not the kinds of judgments that warrant the invocation of this narrow exception to the Act.

Although the relitigation exception was enacted for the first time in the 1948 revision to the statute, it had been recognized in a number of Supreme Court decisions that preceded the Court's opinion in *Toucey v. New York Life Ins. Co.*, *supra*. In fact, the specific provision authorizing injunctions "to protect or effectuate its judgments", 28 U.S.C. § 2283, was enacted by Congress in reaction to *Toucey* and was intended to overrule *Toucey*'s express disavowal of the relitigation exception that had evolved through prior judicial interpretation. *See Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518 (1986); *Mitchum v. Foster*, 407 U.S. 225, 236 (1972).

While the legislative history of the relitigation exception is sparse,[17] it nonetheless confirms that Congress

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[17] The pertinent legislative history, contained solely in the Reviser's Note to the statute, is brief and therefore may be quoted in its entirety:

> Based on Title 28, U.S.C. 1940 ed., § 379 (Mar. 3, 1911, c. 231, § 265, 36 Stat. 1162).
>
> An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions. The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.
>
> The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See Toucey v. New York Life Insurance Co., 62

did not intend to authorize lower federal courts to issue injunctions against state court proceedings to "protect" such intermediate rulings as *forum non conveniens* determinations. Rather, the relitigation exception was enacted to confirm the ability of the lower federal courts "to enjoin relitigation of *cases and controversies fully adjudicated by such courts.*" H.R.Rep. No. 308, 80th Cong., 1st Sess., App. at 181-82 (1947) (emphasis added). As this statement indicates, Congress intended that the relitigation exception allow for federal injunctions where necessary to protect judgments reflecting the federal courts' final resolution of the substantive merits of the case or controversy at issue. There is, however, no support in the legislative history of Section 2283—or in the pre-*Toucey* decisions that established the principle that *Toucey* rejected and Congress sought to restore—for the proposition that interim determinations of the kind at issue here were to be protected by federal injunctions.

The cases examined by Mr. Justice Reed's dissenting opinion as the basis for the relitigation exception were cases in which the parties had litigated the merits of the controversy in the federal courts to a point of conclusive determination.[18] Only these kinds of judgments fit within

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S.Ct. 139, 314 U.S. 118, 86 L.Ed. 100. A vigorous dissenting opinion (62 S.Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

> Therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucy [sic] decision.

H.R. Rep. No. 308, 80th Cong., 1st Sess., App. at 181-82 (1947).

[18] *See, e.g., Supreme Tribe of Ben Hur v. Cauble*, 255 U.S. 356 (1920) (injunction authorized to prevent relitigation of the substantive rights previously established in federal court litigation); *Gunter v. Atlantic Coast Line R.R. Co.*, 200 U.S. 273 (1906) (injunction authorized to protect prior federal adjudication invalidating state tax as unconstitutional); *Riverdale Cotton Mills v. Alabama & G. Manufacturing Co.*, 188 U.S. 189 (1905) (injunction authorized to protect validity of title that had been established in previous federal proceeding); *Root v. Woolworth*, 150 U.S. 401 (1893) (adjudication of title and possession to property); *see also Toucey, supra*, 314 U.S. at 142, 152, n.18 (Reed, J., dissenting) and cases cited therein.

the rationale for the relitigation exception. As Justice Reed explained:

> The alternative [to allowing an injunction] is that a federal judgment entered perhaps after years of expense in money and energy and after the production of thousands of pages of evidence comes to nothing that is final. It is to be only the basis for a plea of res judicata which is to be examined by another court, unfamiliar with the record already made, to determine whether the issues were or were not settled by the former adjudication . . . . [W]e find no cause for alarm in affirming a court which forbids parties bound by its decree to fight the battle over on another day and field. . . . A decree forbidding a defeated party from setting up any right, anywhere, based upon claims adjudged is the usual form where injunctions are appropriate for determining controversies.

Toucey, supra, 314 U.S. at 144-45 (Reed, J., dissenting.[19] *See also Dietzsch v. Huidekoper*, 103 U.S. [13 Otto] 494, 498 (1881) (without an injunction "[t]he judgment in defendant's favor would settle nothing. Instead of terminating the strife between them and their adversaries, it would leave them under the necessity of engaging in a new conflict elsewhere").

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[19] As the Court indicated in *Parsons Steel, supra*, Congress's enactment of Section 2283 reflected its desire to overrule the majority opinion in *Toucey* in favor of the dissenting views expressed in that case by Mr. Justice Reed. Thus, the views of that dissenting opinion should be accorded deference in interpreting the intent of Congress in enacting the relitigation exception in the present Anti-Injunction Act.

A *forum non conveniens* ruling is not one that adjudicates the merits of the case or controversy to a point of final resolution. Rather, it is a determination that the litigants must proceed to another forum for that very purpose. To accord such determinations a level of importance that would authorize an injunctive decree against a state court would be to trivialize the important policies of the Anti-Injunction Act. As the Ninth Circuit has recognized:

> Defendants have prevailed on a procedural point pertaining to the propriety of the prosecution of the foreign seamen's lawsuit in a United States district court. No judgment on the merits has been rendered.

Zipfel, supra, 832 F.2d at 1488.[20]

A *forum non conveniens* decision, in sum, means that the court in question has decided that it will not hear the case. Having relinquished its authority, that court should not enjoin other courts from deciding for themselves whether they will hear a case. In other words, even if a federal court thinks that a Singapore court is preferable to a Texas state court for hearing a case, the federal court's interest in the matter ends once it decides that it

[20] The Ninth Circuit in *Zipfel* attempted to distinguish its holding from the Fifth Circuit's ruling, maintaining that the original dismissal in the *Choo* case had granted the motion for summary judgment on all claims and had "permanently enjoined the plaintiff from prosecuting any action against the defendants in the courts of Texas or any other state." *Zipfel, supra*, 832 F.2d at 1488. Because of the wide scope it ascribed to the original disposition, the Ninth Circuit found that the injunction in this case was proper because Mrs. Choo "was simply bound by the earlier judgment which enjoined her from relitigating the case in state court." *Id.* at 1489. This purported distinction rests on a faulty premise. Summary judgment was granted only on three of Mrs. Choo's claims. Her state law claims were dismissed only on grounds of *forum non conveniens*. Moreover, the original disposition did not enjoin Mrs. Choo from any activity. The injunction was issued by a second federal judge in a separate action.

will not hear the case. At that point, an injunction against the court of a sovereign state is largely a gratuitous insult that does not protect any real federal court interest.[21]

C. The Injunction Cannot Be Justified As Necessary To Protect A Federal Concern That Would Preempt The State Courts From Reaching A Contrary Determination.

In Judge Gee's view, the injunction at issue also was necessary to protect the preemptive effect that a federal *forum non conveniens* determination assertedly should have in admiralty cases, and much of his lengthy opinion is devoted to attempting to establish that such a preemptive effect is required. Even assuming, contrary to what we show below, *see* Part II B, *infra*, that his analysis is correct, the short answer is that federal injunctions are not allowed for the purpose of preventing the state courts from deciding for themselves whether matters are preempted by federal law.

This precise issue arose in *Amalgamated Clothing Workers, supra*. In that case, an injunction was sought against a state court proceeding on the ground that the matter at issue involved labor activities that were protected by federal law. Noting that the three express exceptions of the Anti-Injunction Act were intened to

[21] This conclusion also flows from the standard established in *Atlantic Coast Line*, where the Court recognized that both the second and third exceptions to the Anti-Injunction Act focus on whether it is "necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair a federal court's flexibility and authority to decide the case." *Atlantic Coast Line, supra*, 398 U.S. at 295. Once a court has decided to decline jurisdiction under the doctrine of *forum non conveniens*, its "authority to decide the case" can no longer be impaired. *See also Prack v. Weissinger*, 276 F.2d 446 (4th Cir. 1960); *Domingo v. States Marine Lines*, 340 F. Supp. 811, 817 (S.D.N.Y. 1972).

cover "all exceptions," 348 U.S. at 515, the Court concluded,

> In the face of this carefully considered enactment, we cannot accept the argument . . . that § 2283 does not apply whenever the moving party in the District Court alleges that the state court is "wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress." No such exception had been established by judicial decision under former Section 265. In any event, Congress has left no justification for its recognition now. This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions.

Id. at 515-16. *See also Vendo Co., supra*, 433 U.S. at 639.

In reaching this conclusion, moreover, the Court acknowledged—in language that was to presage its later decision in *Pennzoil v. Texaco*, 107 S. Ct. 1528 (1987)—its full confidence in the ability of state courts to resolve federal issues:

> The assumption upon which the argument proceeds is that federal rights will not be adequately protected in the state courts, and that the "gap" complained of is impatience with the appellate process if state courts go wrong. But during more than half of our history, Congress, in establishing the jurisdiction of the lower federal courts, in the main relied on the adequacy of the state judicial systems to enforce federal rights, subject to review by this Court. With limited exceptions, it was not until 1875 that the lower federal courts were given general jurisdiction over federal questions. During that entire period, the vindication of federal rights depended upon the procedure which petitioner attacks as so grossly inadequate that it could not have been contemplated by Congress. The prohibition of Section 2283 is but

> continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflicts between state and federal courts.

Amalgamated Clothing Workers, supra, 348 U.S. at 518. *Cf. Pennzoil, supra*, 107 S. Ct. at 1527-29.

The holding of *Amalgamated Clothing Workers* has been unanimously reaffirmed since. Federal courts do not have the authority to enjoin state court proceedings "merely because it is asserted that the state court is improperly asserting jurisdiction in an area preempted by federal law or federal procedures." *Atlantic Coast Line, supra*, 398 U.S. at 297-98 (Brennan, J., dissenting); *see also id.* at 294 (majority opinion); *Vendo Co., supra*, 433 U.S. at 639.

Accordingly, Judge Gee's lengthy analysis of the importance of federal *forum non conveniens* principles to cases brought in admiralty is of no relevance to the Anti-Injunction Act issue here presented. Those precise preemption issues can be raised and resolved in the Texas state courts. If Judge Gee is correct, there is no reason to expect that the Texas courts will reject his view. And if they do, of course, this Court sits as final arbiter to review any erroneous decision on federal preemption. Whatever the outcome, that is the process that must be followed in this case. It should not be derailed through the use of a federal court injunction that would end the state court proceedings prematurely.

II. PRINCIPLES OF EQUITY, COMITY AND FEDERALISM PRECLUDE THE ISSUANCE OF THE INJUNCTION AT ISSUE IN THIS CASE.

As the Court cautioned in *Mitchum v. Foster*, 407 U.S. 225, 243 (1972), an exemption from the jurisdictional bar of Section 2283 does not "qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding." Thus, even were this Court to find that

the Anti-Injunction Act did not preclude issuance of an injunction, the question would remain whether that power should have been exercised in this case. Petitioners submit that it should not.

This conclusion flows from a basic understanding of *forum non conveniens* principles and a respect for the independence and authority of the state courts. In this case, the courts of Texas have a substantial interest in resolving the open question concerning the scope of the Texas statute. Moreover, those courts are as capable as the lower federal courts of identifying any paramount admiralty concerns that may inhere in the federal *forum non conveniens* doctrine, and they are better able to determine how such concerns should be accommodated in interpreting Texas law.

A. State Courts Have An Overriding Interest In Determining The Scope Of Their Own *Forum Non Conveniens* Doctrine.

Although the Anti-Injunction Act is motivated by the desire to "prevent needless friction between state and federal courts," *Oklahoma Packing Co. v. Oklahoma Gas & Electric Co.*, *supra*, 309 U.S. at 9, the prohibitions of Section 2283 are distinct from the traditional notions of equity, comity, and federalism that "soften the tensions inherent in a system that contemplates parallel judicial processes." *Pennzoil*, *supra*, 107 S. Ct. at 1526 n.9; *see also Vendo Co.*, *supra*, 433 U.S. at 639. Thus, even where the Anti-Injunction Act does not deprive the federal courts of the power to issue an injunction, the cautions borne of comity remain and restrain courts from overusing their power. *Compare Mitchum v. Foster*, *supra*, (§ 1983 is an express statutory exception to Anti-Injunction Act) *with Huffman v. Pursue, Inc.*, 420 U.S. 592, (1975) (finding that abstention may be proper in a § 1983 case) *and Pennzoil*, *supra* (abstention required in § 1983 case). In this case, the proper restraint was not exercised.

This Court has long recognized the unique interests that courts have in deciding whether they will exercise jurisdiction over a case. *United States v. United Mine Workers*, 330 U.S. 258, 291-93 (1947). Despite possible federal concerns, state courts are free to decide the applicability of the principles of *forum non conveniens* according to their own law. *See Missouri v. Mayfield*, *supra*; *cf. Parsons v. Chesapeake & O. Ry.*, *supra*.[22] There are strong justifications for this flexibility. For example, the state court is the one that must face the "[a]dministrative difficulties [that] folow for courts when litigation is piled up in congested centers instead of being handled at its origin." *Gulf Oil*, *supra*, 330 U.S. at 508; *see also Piper Aircraft*, *supra*, 454 U.S. at 241 (*forum non conveniens* based on "considerations affecting the court's own administrative and legal problems"); *Koster*, *supra*, 330 U.S. at 524 (same). Because the *forum non conveniens* doctrine does not concern power to adjudicate the dispute or to exercise jurisdiction over the parties, but rather is one affording the court the discretion to decide whether to exercise its power, state courts must be able

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[22] *Parsons* presented the question whether a state court *forum non conveniens* dismissal was entitled *res judicata* effect in a subsequent motion to transfer in federal district court pursuant to 28 U.S.C. § 1404(a). Explaining why it was not, the Court elucidated how different considerations invariably pertain to different courts. It noted, for example, how docket congestion could vary from one court to the next. *Parsons*, *supra*, 375 U.S. at 73. As the Court concluded, in terms applicable to the issue here,

> These considerations no more than *illustrate* the many variables which might affect the exercise of discretion by a state court, as contrasted to a federal court, in any given case. *Since different factual considerations may be involved in each court's determination*, we hold that a prior state court dismissal on the ground of *forum non conveniens* can never serve to divest a federal district judge of the discretionary power vested in him by Congress to rule upon a motion to transfer under § 1404(a).

Id. at 73-74 (emphasis added).

to account for purely local concerns and interests. *Gulf Oil, supra.* As a result, matters of local docket control—and questions whether a state wishes to hear all cases within its constitutional power—are committed to the state courts' discretion.

The "open courts" provisions of the Constitution and laws of the State of Texas elevate this *forum non conveniens* determination to a matter of particularly high state concern. An "open courts" provision has appeared in each of Texas's six constitutions, as well as the Constitution of the Republic of Texas of 1836. It presently provides that "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Texas Const., Article I, § 13. The "open forum" statute implements this constitutional directive. *See* Section 71.031, Tex. Civ. Prac. & Rem. Code (Vernons 1986), quoted in note 7, *supra.* Accordingly, whether and how dismissals for *forum non conveniens* considerations are to be recognized in admiralty and other cases brought under that statute implicate important issues of state constitutional law. Moreover, as the Fifth Circuit recognized in this case, *see* Pet. App. II App. at 29-33, *citing Couch v. Chevron Int'l Co.*, 682 S.W.2d 534 (Tex. 1984), the Supreme Court of Texas has explicitly reserved these questions for its resolution in an appropriate case.

Without even inquiring into the State's unique interest in having its own courts decide the reach of their jurisdiction, the Fifth Circuit mistakenly concluded that federal *forum non conveniens* considerations preempt the field. Rather than strain to establish federal supremacy over state determinations of *forum non conveniens*, however, the federal court should first have considered Texas's weighty interest in having its own courts determine, at least as an initial matter, whether and how to accommodate the federal *forum non conveniens* concerns

in this case.[23] In short, the court below simply ignored the principles of comity and federalism that obviously

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[23] Moreover, Judge Gee's analysis of preemption contradicts this Court's cases on the subject. Where Congress has enacted legislation over a field, the structure of preemption analysis is well settled. *See, e.g., Exxon Corp. v. Eagerton*, 462 U.S. 176, 180-82 (1983); *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 203-04 (1983); *Chicago & N.W. Transp. v. Kalo Brick & Tile*, 450 U.S. 311, 317-18 (1981). "[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). This assumption must of course yield when Congress has expressly preempted state law, *see, e.g., Aloha Airlines v. Director of Taxation*, 464 U.S. 7 (1983), or has so pervasively regulated an entire sphere as to leave no room for enforcement of state laws on the same subject. *See, e.g., City of Burbank v. Lockheed Terminal, Inc.*, 411 U.S. 624, 633 (1973). It must also yield when there is a specific conflict with federal law, such as where "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-43 (1963), or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). This Court has stated that the preemption inquiry "is essentially a two step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict." *Kalo Brick, supra*, 450 U.S. at 317-18; *Perez v. Campbell*, 402 U.S. 637, 644 (1971).

Far from undertaking this analysis, Judge Gee advanced "five concepts or clusters of ideas" for his preemption analysis. Pet. App. II at 41. The short response to Judge Gee's assertions is that Congress has neither federalized the maritime *forum non conveniens* inquiry or so pervasively regulated maritime law that state enforcement of its own *forum non conveniens* law would conflict with the statutory scheme. While federal substantive law must govern conduct, rather than preempting the field of state procedures, Congress has allowed for their application in the savings to suitors clause. *See* Part II B, *infra.*

are implicated here. On this basis alone, its decision should be reversed.[24]

B. Federal Law Does Not Preempt State *Forum Non Conveniens* Law In Admiralty Cases.

Finally, while we believe that the matter is not properly presented for the Court's resolution at this time, it is worth noting that Judge Gee's lengthy analysis of maritime law and federal *forum non conveniens* principles is flawed. Although Judge Gee properly recognized that this Court's holding in *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 106 S. Ct. 2485 (1986), dictates that maritime actions brought in state court be governed by the "so called 'reverse-*Erie*' doctrine requiring that the *substantive* remedies afforded by the States conform to the governing maritime standards," *id.* 106 S. Ct. at 2495 (emphasis added), he mistakenly applied that principle to the procedural concerns implicated by the *forum non conveniens* doctrine. This reflects a substantial error of analysis; the procedural interests of the adjudicating forum are at root in the substantive/procedural law distinction in both the *Erie* and reverse-*Erie* contexts. Thus, even when a particular body of substantive law must govern a cause of action, the forum applying that substantive law is fully entitled to use its own procedural rules, including local principles of *forum non*

[24] These principles find expression in the abstention cases of this Court, which also indicate that the federal court should have stayed its hand. Because "[t]he various types of abstention are not rigid pigeonholes into which federal courts must try to fit cases," different aspects of different abstention cases apply to this case. *Pennzoil, supra*, 107 S.Ct. at 1526 n.9. For example, the substantial state interest in having its own courts interpret a provision reflective of the Texas Constitution indicates that *Thibodaux*-type abstention applies to the facts of this case. *See Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). Furthermore, since the state courts are equally capable of deciding any federal preemption issue, *Younger* abstention would apply as well. *See Younger v. Harris*, 401 U.S. 37 (1971); *Pennzoil, supra.*

conveniens. See, e.g., In re Air Crash Disaster Near New Orleans, 821 F.2d 1147 (5th Cir. 1987) (en banc); *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir.), *cert. denied*, 474 U.S. 948 (1985); *see generally* 1A Moore's Federal Practice ¶ 0.317[7], at 3238-39 (federal court sitting in diversity should follow its own *forum non conveniens* rules); 15 C. Wright, A. Miller & E. Cooper, *supra*, § 3828, at 194 (same).

The proper choice of substantive and procedural law is no different in maritime actions. *See Black Diamond S. S. Corp. v. Robert Stewart & Sons (The Norwalk Victory)*, 336 U.S. 386 (1949) (Frankfurter, J.) (finding admiralty limitation proceeding procedural and applying forum law); *Oceanic Steam Navigation Co. v. Mellor (The Titanic)*, 233 U.S. 718 (1914) (Holmes, J.) (finding admiralty limitation proceeding substantive and applying foreign law). *See generally* Gilmore & Black, *The Law of Admiralty* §§ 10-43—10-45 (2d ed. 1975). Only where a state law is "a part of the very *substance* of [a] claim and cannot be considered a mere incident of form or *procedure*" is it preempted by federal maritime law. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 240 (1942) (emphasis added).[25]

The reason for this distinction, as well as the rule that determines whether a matter is to be considered substantive or procedural, is clear. Substantive rules must be uniform to prevent conflicting state laws from "extend[ing] as a conduct-governing enactment on the high-seas." *Tallentire, supra*, 106 S.Ct. at 2495. Thus, only if state law is likely to effect conduct in a way that

[25] Judge Gee was thus clearly incorrect when he stated that *Garrett* stood for the proposition that federal maritime preemption can apply to "procedural" matters. Pet. App. II at 52. This Court obviously considered the federal burden of proof at issue in *Garrett* to be a matter of substance and not procedure. It therefore held that the conflicting state burden of proof had been preempted by federal law.

conflicts with federal law is it substantive and not to be applied. Because the exercise of jurisdiction under the Texas "open forum" statute would not effect underlying conduct,[26] the Texas courts may adopt whatever procedural rules they deem appropriate. *Id.; Madruga v. Superior Court*, 346 U.S. 556, 360-61 (1954); *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924). The Texas courts would therefore be free to accommodate the concerns reflected in the federal *forum non conveniens* doctrine or not, as they see fit.

Judge Gee's notions of the mandatory nature of federal *forum non conveniens* determinations in maritime matters also reflect mistaken concepts of the role of the federal courts and an exaggerated concern that the Texas courts will open the floodgates to foreign litigation. In the first place, his expressed concern for international relations is misplaced; foreign policy is not a matter set by the judiciary but by the elected representatives of government. For almost as long as the Republic has existed, Congress has chosen to allow states to adjudicate in their own courts claims based on maritime law.[27]

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[26] The Texas legislature assured this result by providing in the statute that the Texas courts "shall apply the rules of substantive law that are appropriate under the facts of the case." *See* Tex. Civ. Prac. & Rem. Code, § 71.031(c) (Vernon 1986); quoted in note 7, *supra*.

[27] The Judiciary Act of 1789, § 9, 1 Stat. 76, embodied the "savings to suitors" clause that preserved the right of maritime plaintiffs to proceed in state court on in personam actions, and that law has survived to this day without substantive alteration. *See* 28 U.S.C. § 1333; *Madruga, supra*, 346 U.S. at 560 n.12 (1954). *See also* 46 U.S.C. § 767 (analogous savings to suitors provision in DOHSA). At any time in the two-hundred interceding years, Congress could have provided that this grant was subject to the limitation that state courts apply federal procedural principles in deciding *forum non conveniens* motions, but it has not. As the Fifth Circuit has itself recognized, the special maritime rules that apply to venue do not apply to cases brought in state court under the saving to suitors clause. *T.N.T. Marine Service Inc. v. Weaver Shipyards & Dry Docks*, 702 F.2d 585 (5th Cir.), *cert. denied*, 464 U.S. 847 (1983). Moreover, despite the passage of other acts dealing with maritime jurisdiction, *see, e.g.*, 46 U.S.C. §§ 181-189 (allowing shipowner to bring admiralty limitation proceeding), maritime *forum non conveniens* law has not been federalized. *Petition of the Texas Co. (The Washington)*, 213 F.2d 479 (2d Cir.) ("the statutory privilege of limiting liability is not in the nature of a *forum non conveniens* doctrine"), *cert. denied*, 348 U.S. 829 (1954).

Thus, far from preempting the field, Congress clearly preserved concurrent state court jurisdiction over actions that could have proceeded as maritime claims in federal court, and it has allowed states to adopt procedures that differ from those in federal court.[28] If Congress believed that a uniform *forum non conveniens* rule was required for policy reasons or otherwise, it could have enacted that standard. Absent such legislation, the federal courts should not invoke foreign policy concerns on an *ad hoc* basis to fashion a new rule.

Judge Gee's concern that Texas will open the floodgates to foreign litigation is similarly misplaced. The "open forum" statute itself limits actions to those where the foreign citizen is from a country affording equal treaty rights to the United States, and the statute further requires that the Texas courts apply the "appropriate" substantive law. *See* Section 71.031(a)(3), (c), quoted in note 7, *supra*. Moreover, there are constitutional limitations on what law a state may apply. *See Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981). Likewise, the Due Process Clause limits any state's attempt to bring foreigners into court in inappropriate

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[28] Such different procedures are not uncommon. For example, the right to such remedies as maritime attachment and garnishment, as well as the right to trial by jury, vary depending on whether the suit is a federal admiralty claim or a state claim pursued under the saving to suitors clause. *T.N.T. Marine Service, supra*, 702 F.2d at 586-87. Because such "[n]umerous and important consequences flow from the . . . decision to bring [a maritime] action in state court," *Alleman v. Bunge Corp.*, 756 F.2d 344, 345 (5th Cir. 1985), Judge Gee's novel *forum non conveniens* theory would not assure the uniformity he seeks.

cases. *See, e.g., Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984). As this Court held last Term, due process not only requires the minimum contacts that Judge Gee considers to be an insufficient safeguard, it also requires that the exercise of jurisdiction be "consistent with fair play and substantial justice." *Asahi Metal Industry v. Superior Court of California*, 107 S.Ct. 1026, 1033-35 (1987); *see also International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (employing "traditional notions of fair play and substantial justice"); *Milliken v. Meyer*, 311 U.S. 457, 463 (1940) (same).

In sum, even if there were no Anti-Injunction Act bar in this case, the decision below should be reversed. While proper resolution of the issue of federal preemption of *forum non conveniens* principles in maritime actions is not presented here, we believe that Judge Gee's decision ultimately will prove to have been incorrect. More significantly, at this point in the litigation, it is clear that the issue should be allowed to be considered by the Texas courts.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully Submitted,

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